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Supreme Court, U.S.
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In The

Supreme Court of the United States

NORMA KIRCHMANN,

Petitioner,

v.

LAKE ELSINORE UNIFIED SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Fourth Appellate District, Division Two

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

THE RULING THAT A CALIFORNIA SCHOOL DISTRICT IS NOT A "PERSON" FOR PURPOSES OF 42 U.S.C. § 1983, DOES NOT CONFLICT WITH THE DECISIONS OF OTHER COURTS.

An examination of the relevant law, both federal and state, leads to the conclusion that a California school district is not a "person" within the meaning of 42 U.S.C. § 1983, and therefore suit cannot be maintained against it under that statute. Decisions finding that school districts in other States are "persons" for § 1983 purposes do not amount to conflicting decisions which need to be resolved by this Court.

In *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) this Court held that a State is not a person within the meaning of § 1983. 491 U.S. at 63-64. In fact, this Court explained:

> Given that a principal purpose behind the enactment of § 1983 was to provide a federal forum for civil rights claims, and that Congress did not provide such a federal forum for civil rights claims against States, we cannot accept petitioner's argument that Congress intended nevertheless to create a cause of action against States to be brought in state courts, which are precisely the courts Congress sought to allow civil rights claimants to avoid through § 1983.

491 U.S. at 66.

Petitioner has asserted conflicting decisions regarding school districts of various States and has asked this Court to permit her to proceed against DISTRICT in a California state court, even if suit cannot properly be

maintained in a federal court. In *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) this Court examined a case in which the state court of Florida declined to hear a § 1983 case, on the basis that Florida state law had "extended absolute immunity from suit not only to the State and its arms but also to municipalities, counties, and school districts that might otherwise be subject to suit under § 1983 in federal court." 496 U.S. at 365-366. While this Court found the suit could be maintained in that case, the Court also stated:

> As we held last Term in *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989), an entity with Eleventh Amendment immunity is not a "person" within the meaning of § 1983. The anomaly identified by the State Supreme Court, and by the various state courts which it cited, that a State might be forced to entertain in its own courts suits from which it was immune in federal court, is thus fully met by our decision in *Will*. *Will* establishes that the State and arms of the State, which have traditionally enjoyed Eleventh Amendment immunity, are not subject to suit under § 1983 in either federal court or state court.

496 U.S. at 365 (footnote omitted.)

This Court went on to clearly reject the interpretation that petitioner would have it take; specifically that California's waiver of tort immunity for school districts in state court makes California school districts "persons" subject to liability under § 1983 even if they are arms of the State:

> The elements of, and the defenses to, a federal cause of action are defined by federal law [Citations omitted.] *A State may not, by statute or common law, create a cause of action under § 1983 against an entity whom Congress has not subjected to liability.* [Citation omitted.] Since this Court has construed the word "person" in § 1983 to exclude States, neither a federal court nor a state court may entertain a § 1983 action against such a defendant.

Howlett v. Rose, supra, 496 U.S. at p. 375-376, (emphasis added.) In short, the California Legislature cannot, by enacting the California Tort Claims Act, make California school districts liable under § 1983 if they are arms of the State and therefore not "persons" subject to liability under federal law.

Petitioner's argument turns on whether California school districts are or are not "persons" within the meaning of § 1983. The crux of petitioner's argument is that because various Courts have found school districts in some States are "arms of the State" and therefore are not "persons" within the meaning of § 1983, and the school districts of other States are not "arms of the State" and therefore are "persons," there are conflicts of law which this Court must resolve. Of course, the differences in result arise from the differences in the state laws being examined.

In *Mt. Healthy City School District Board of Education v. Doyle,* 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977), this Court stated:

> The bar of the Eleventh Amendment to suit in federal courts extends to States and state

> officials in appropriate circumstances, *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974); *Ford Motor Co. v. Dept. of Treasury, supra*, but does not extend to counties and similar municipal corporations. See *Lincoln County v. Luning*, 133 U.S. 529, 530, 10 S.Ct. 363, 33 L.Ed. 766 (1890); *Moor v. County of Alameda*, 411 U.S. 693, 717-721, 93 S.Ct. 1785, 1799-1801, 36 L.Ed.2d 596 (1973). The issue here thus turns on whether the Mt. Healthy Board of Education is to be treated as an arm of the State partaking of the State's Eleventh Amendment immunity, or is instead to be treated as a municipal corporation or other political subdivision to which the Eleventh Amendment does not extend. The answer depends, at least in part, upon the nature of the entity created by state law.

429 U.S. at 280.

Whether a local public entity is an arm of the State is a question of federal law. *Duke v. Grady Municipal Schools*, 127 F.3d 972, 975 (10th Cir. 1997) (citing *Regents of University of California v. Doe*, 519 U.S. 425, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997).) However, the federal question can only be answered after considering the provisions of state law that define the agency's character. *Id.*

The *Duke* Court went on to note that while most Courts considering the issue since *Mt. Healthy* have held the local school districts or boards are not entitled to Eleventh Amendment immunity, the question must nonetheless be determined based upon the state laws involved in each case. *Id.* See also, *Hadley v. North Arkansas Community Technical College*, 76 F.3d 1437 (8th Cir. 1996) (holding suit barred by Eleventh Amendment.)

A review of the Court of Appeal Opinion in this case reveals a thorough and comprehensive examination of not only the applicable state law, but the various factors examined by the courts nationwide. (App. 9-25.) In so doing, the California Court of Appeal reached the same conclusion as the United States Court of Appeals for the Ninth Circuit in *Belanger v. Madera Unified School District*, 963 F.2d 248 (9th Cir. 1992), cert. denied, 509 U.S. 919, 113 S.Ct. 1280, 122 L.Ed.2d 674 (1993).

The *Belanger* Court examined the factors identified in *Mitchell v. Los Angeles Community College District*, 861 F.2d 198, 201 (9th Cir. 1988), cert. denied, 490 U.S. 1081, 109 S.Ct. 2102, 104 L.Ed.2d 663 (1989), "in light of the way California law treats the governmental agency." 963 F.2d at 251. In so doing, the *Belanger* Court recognized certain unique features of the way school districts are treated under California law. The *Belanger* Court explained: "Unlike most states, California school districts have budgets that are controlled and funded by the state government rather than the local districts." *Id.*

In particular the *Belanger* Court recognized the impact of two California Supreme Court decisions and the adoption of Proposition 13. *Id.* The California Supreme Court decisions, *Serrano v. Priest*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971), and *Serrano v. Priest*, 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929 (1976), cert. denied, 432 U.S. 907, 97 S.Ct. 2951, 53 L.ed.2d 1079 (1977), addressed public school funding – specifically the need to equalize public school funding on a per student basis. *Id.* Proposition 13 put a property tax limitation in place, which "inadvertently helped California achieve the result mandated in *Serrano II*." *Id.*

Therefore, California school districts are differently situated from school districts in most other States. As a consequence, California school districts are arms of the State, and are not "persons" within the meaning of § 983. Different results in other States are to be expected, given California's unique laws.

While petitioner has argued the ultimate source of the funds which will be used to pay a judgment is unimportant to the analysis, that is not the case. In *Regents of the University of California v. Doe*, 519 U.S. 425, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997), this Court examined a case in which the Regents were sued by a prospective employee, Doe, when Doe was not hired because of Doe's inability to obtain the necessary security clearance. Regents were named as parties, since they operated the laboratory at which Doe sought employment, but the United States was required to indemnify the Regents. This Court found the action barred by the Eleventh Amendment. In so ruling, this Court stated "the question whether a money judgment against a state instrumentality or official would be enforceable against the State is of considerable importance to any evaluation of the relationship between the State and the entity or individual being sued." 519 U.S. at 430. The Court went on to recognize the indemnity agreement between the Regents and the United States did not alter the analysis. *Id.* at 430-431. See also, *Hadley, supra*, 76 F.3d 1437, 1441 (even if NATAC could initially satisfy a judgment from other operating revenues, the judgment would produce a higher budget shortfall which must be paid from state funds – therefore the essence of the recovery would be from the State.)

Here, since a judgment against DISTRICT would have had to be satisfied using State funds, suit in a federal court against DISTRICT would be barred by the Eleventh Amendment, and therefore, DISTRICT is not a "person" within the meaning of § 1983.

The decision of the California Court of Appeal in this case does not conflict with any decision of a State court of last resort, a United States Court of Appeals or of this Court. At most it applies facts specific to California school districts and reaches a conclusion different than those required by the law of other States. Moreover, the decision of the California Court of Appeal in this case is consistent with the decision reached by the United States Court of Appeals for the Ninth Circuit in *Belanger, supra,* 963 F.2d 248, in which this Court denied a similar petition for certiorari. Accordingly, this Court may properly deny the instant petition.

THE CALIFORNIA TORT CLAIMS ACT DOES NOT WAIVE SOVEREIGN IMMUNITY FOR PURPOSES OF A § 1983 ACTION AGAINST DISTRICT.

Even assuming, *arguendo,* that California could make an arm of the state a "person" for purposes of § 1983 by waiving sovereign immunity, a point which respondent in no way concedes, the California Tort Claims Act does not amount to a clear waiver of sovereign immunity for purposes of § 1983.

As this Court explained in *Alden v. Maine,* 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999), "The Eleventh Amendment confirmed rather than established sovereign immunity as a constitutional principle; it follows that the

scope of the States' immunity from suit is demarcated not by the text of the Amendment alone but by fundamental postulates implicit in the constitutional design." 527 U.S. at 729. See also, *Riggle v. State of California*, 577 F.2d. 579, 582 (9th Cir. 1978). Further, this Court makes it clear in *Alden* that a State must expressly waive sovereign immunity. Here, the California Tort Claims Act, as it has been interpreted by both the California courts and federal courts, cannot logically be construed as an express waiver of sovereign immunity for purposes of § 1983.

In *Riggle, supra*, 577 F.2d 579, the United States Court of Appeal for the Ninth Circuit explained that the California Tort Claims Act was enacted by the State Legislature in 1963 in order to abrogate, under limited circumstances, the governmental immunity from tort liability announced by the California Supreme Court in *Muskopf v. Corning Hospital District*, 55 Cal.2d 211, 11 Cal.Rptr. 89, 359 P.2d 457 (1961). *Id.* at 585. Indeed, the *Riggle* Court also recognized that the Act abolished all common law tort liabilities of public entities, and created instead a scheme whereby public entities are liable in tort only to the extent declared by statute. *Id.* Therefore, any waiver of sovereign immunity by California was limited.

In order to proceed under the California Tort Claims Act, one must comply with the claim presentation requirements set forth in the Act. Indeed, presentation of a claim for damages is more than a procedural requirement, it is condition precedent to maintaining a suit. *Williams v. Horvath*, 16 Cal.3d 834, 842, 129 Cal.Rptr. 453, 548 P.2d 1125 (1976); *Hernandez v. McClanahan*, 996 F.Supp. 975, 979 (N.D. Cal. 1998) (citing *United States v. State of California*, 655 F.2d 914, 918 (9th Cir. 1980).) As

such, no suit can be maintained if a claim is not presented to the public entity in question. *Id.*

However, this Court has made it clear that a State may not impose any judicial or administrative remedy which must be exhausted before a § 1983 complaint may be brought. *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496, 516, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982). Further, the California Supreme Court has expressly held that imposing a claim presentation requirement, under the California Tort Claims Act, on a § 1983 claim would be improper. *Williams v. Horvath*, 16 Cal.3d 834, 838-840, 129 Cal.Rptr. 453, 548 P.2d 1125 (1976).

This logical inconsistency points out the weakness of petitioner's argument. By arguing that the California Tort Claims Act is a waiver of sovereign immunity which would effectively make an arm of the state a "person" for purposes of § 1983 liability, petitioner has implicitly asked this Court to either overrule *Patsy*, or to reinterpret the California Tort Claims Act. Doing the former would permit States to limit local public entities' liability under § 1983. Doing the latter would be as intrusive upon California's sovereign immunity as would granting the petition for relief from the California Tort Claims Act would have been in *Hernandez, supra*, 996 F.Supp. 975.

Neither interpretation urged by petitioner is required or logical. Rather, it becomes apparent that the California Tort Claims Act is not the clear and unequivocal waiver which would be required to permit a suit under § 1983 to be brought in a state court against an arm of the State. Since there has not been such a waiver, no suit under § 1983 may properly be maintained against a California

school district under federal law, whether the suit be brought in state or federal court. As such, the petition now before the Court may properly be denied.

THERE IS NO NEED IN THIS CASE TO CONSIDER WHETHER AN ENTITY CONSIDERED AN "ARM OF THE STATE" FOR SOME PURPOSES MAY NOT BE AN "ARM OF THE STATE" FOR OTHER PURPOSES.

While petitioner has identified a question left open in *Regents of the University of California v. Doe, supra,* 519 U.S. 425, fn.2, 117 S.Ct. 900, 137 L.Ed.2d 55, petitioner has not presented any reason for this Court to grant the instant petition to consider whether a public entity may be considered an "arm of the State" for some purposes and not for others. Here, petitioner seeks recovery of damages based upon an employment-related violation of her First Amendment rights. While petitioner now seeks those damages arising out of disciplinary action taken against her in her employment, the disciplinary action was reversed by a prior published opinion of the California Court of Appeal. *Kirchmann v. Lake Elsinore Unified School District,* 57 Cal.App.4th 595, 614-615, 67 Cal.Rptr.2d 268 (1997).

Petitioner has not explained how or why this Court should consider this issue which was not previously raised. This case does not present a public entity engaging in a "non-governmental function," nor does it involvea vast and complex entity. Moreover, this case

does not present a proper record for examination of the issue. As such, this Court may deny the instant petition.

CONCLUSION

Petitioner has not presented any reason for this Court to grant the instant petition. Existing law makes clear DISTRICT is not a "person" within the meaning of § 1983, and therefore petitioner cannot prevail in her suit. Accordingly, this Court may properly decline to hear this matter.

DATED: May 7, 2001

Respectfully submitted,

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